

DISTRICT OF COLUMBIA

1. Citation for the state's workers' compensation statute.

District of Columbia Code Annotated §32-1501, et seq.

SCOPE OF COMPENSABILITY

2. Who are covered "employees" for purposes of workers' compensation?

Employee includes every person, including a minor, in the service of another under any contract of hire or apprenticeship, written or implied, in the District of Columbia, with some limited exceptions. D.C. Code Ann. §32-1501(9).

3. Identify and describe any "statutory employer" provision.

An employee whose employer is an uninsured sub-contractor can assert a claim against the general contractor. Where there is a hierarchy of contractors, the first insured contractor in the hierarchy becomes liable for compensation benefits.

4. What type of injuries are covered and what is the standard of proof for each:

A. Traumatic or "single occurrence" claims.

Injury means accidental injury or death arising out of and in the course of the employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of third persons directed against an employee because of the employment. There is no requirement that a specific or unusual incident occur for there to be an injury under the Act. Tremmer v. A.G. Prada Co., H&AS No. 84-185 (1985). An employee in the District of Columbia enjoys a rebuttable presumption that the claim is compensable if something unexpectedly went wrong within his or her body, and that the working conditions could have caused the harm.

B. Occupational disease (including respiratory and repetitive use).

See answer 4A. The same presumptions apply. “Last known exposure” rule applies. D.C. Code Ann. §32-1510. Repetitive use claims are considered “cumulative trauma”, as opposed to occupational diseases.

5. What, if any, injuries or claims are excluded?

An employee who is receiving benefits under the workers' compensation law of any other state for the same injury or death, casual employees of an employer, and employees who are only temporarily or intermittently employed in the District of Columbia, are not covered by the Act. D.C. Code Ann. §32-1503. Injuries stemming from harassment are also excluded.

6. What psychiatric claims or treatments are compensable?

An injured worker alleging a mental-mental claim invokes the statutory presumption of compensability by showing a psychological injury and actual workplace conditions or events which could have caused or aggravated the psychological injury. The injured worker's showing must be supported by competent medical evidence

An injured worker alleging a psychological harm related to physical injury suffered in the course of employment (“physical-mental” cases), invokes the statutory presumption of compensability as long as the claimant can show that his physical work-related injury had the potential of resulting in or contributing to the psychological injury. *Ramey v. DOES*, 997 A.2d 694, 699-700 (D.C. 2010).

7. What are the applicable statutes of limitations?

A claim must be filed within one year from the date of injury or one year from the date the employee is aware or should have been aware of the causal relationship between the injury and the employment. D.C. Code Ann. §32-1514. However, the one year statute will not begin to run until the Employer's First Report of Injury is filed with the Office of Workers' Compensation. Furthermore, the employee must be advised by the employer of the filing of the Employer's First Report in order to commence the running of the statute. The employer is required to provide to the employee, by certified mail, return receipt requested, a statement of the employee's rights and obligations which identifies the employees notice and limitation requirements. The employer of an employee who has contracted COVID-19 in the course of and within the scope of employment, or whose contact with others in the course of and within the scope of employment makes the contracting of COVID-19 probable, shall report the injury or probable injury within 10 days from the date of the injury or the date the employer has knowledge of the injury or probable injury. D.C. Code Ann. §32-1532.

8. What are the reporting and notice requirements for those alleging an injury?

The employee should notify the employer in writing within 30 days of the injury or within 30 days of awareness of the relationship between the injury and the employment. Late notice will not bar a claim if the employer otherwise had knowledge of the injury and was not prejudiced by the late notice. A finding of late notice bars an employee from indemnity only. The employee may still obtain medical benefits. D.C. Code Ann. §32-1513.

9. Describe available defenses based on employee conduct:**A. Self-inflicted injury.**

Liability for compensation does not apply where injury to the employee was occasioned solely by intoxication or the willful intention of the employee to injure himself or herself or another. D.C. Code Ann. §32-1503(d). However, there is a legal presumption that the injury was not caused solely by the intoxication of the injured employee. D.C. Code Ann. §32-1521(3).

B. Willful misconduct, "horseplay," etc.

There is no applicable statutory defense. Courts, however, have recognized willful misconduct and horseplay as potential defenses, depending on the severity of the conduct. An employee may be deemed to have gone beyond the scope of the employment if he or she: (1) violated an express prohibition; (2) acted without authorization; or (3) was on a personal mission. There is a legal presumption that an injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another. D.C. Code Ann. §32-1521(4).

C. Injuries involving drugs and/or alcohol.

See answer 9A.

10. What, if any, penalties or remedies are available in claims involving fraud?

Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining compensation shall be guilty of a misdemeanor, and may be fined up to \$1,000.00 and/or subject to imprisonment not to exceed one year. D.C. Code Ann. §32-1533.

11. Is there any defense for falsification of employment records regarding medical history?

Not per se, but any person who willfully makes any false or misleading statement or representation for the purpose of obtaining compensation shall be guilty of a misdemeanor, and may be fined up to \$1,000.00 or subject to imprisonment not to exceed one year. D.C. Code Ann. §32-1533.

12. Are injuries during recreational and other non-work activities paid for or supported by the employer compensable?

Depending on the facts of a particular case, injuries during recreational and other non-work activities can be compensable, if they are sponsored or otherwise encouraged by the employer.

13. Are injuries by co-employees compensable?

Yes.

14. Are acts by third parties unrelated to work, but committed on the premises, compensable (e.g. "irate paramour" claims)?

Not generally.

BENEFITS**15. What criterion is used for calculating the average weekly wage?**

Effective April 16, 1999, the average weekly wage is based on the employee's wages during the 26 weeks preceding the injury. 13 weeks for injuries prior thereto. Wage stacking is permitted.

16. How is the rate for temporary/lost time benefits calculated, including minimum and maximum rates?

Such benefits are paid at two-thirds of the average weekly wage. The 20210 minimum compensation

rate is \$388,473.86, and the maximum compensation rate is \$1,553,873.44.

- 17. How long does the employer/insurer have to begin temporary benefits from the date disability begins?**

As soon as possible after date of notice of injury, but not later than the fourteenth day thereafter.

- 18. What is the "waiting" or "retroactive" period for temporary benefits (e.g. must be out days before recovering benefits for the first days)?**

The employee must be out 14 days before recovering benefits for the first 3 days. §32-1505(a).

- 19. What is the standard/procedure for terminating temporary benefits?**

Benefits are terminated by entering into a stipulation if the employee has returned to work, or by filing a Notice of Controversion (Form No. 11 DCWC) and Memorandum of Final Payment (Form 15 DCWC) setting forth the reason for the termination of the voluntary payment of benefits. Once a compensation order has been issued requiring the payment of temporary benefits, the employer/insurer may not unilaterally terminate them without first securing another compensation order.

- 20. Is the amount of temporary total disability paid credited toward the amount entitled for permanent partial disability?**

No.

- 21. What disfigurement benefits are available and how are they calculated?**

The hearing examiner shall award proper and equitable compensation for serious disfigurement of the face, head, neck, or other normally exposed bodily areas, up to \$7,500.00. The calculation of disfigurement is discretionary and normally related to the extent that the injury interferes with the claimant's work ability. Warren v. King, H&AS No. 85-116 (1986).

22. How are permanent partial disability benefits calculated, including the minimum and maximum rates:

A. How many weeks are available for scheduled member/parts, and the standard for recovery.

Each member listed in the schedule shown at D.C. Code Ann. §32-1508(3) is assigned a corresponding number of weeks for which the employee will receive compensation if he or she has lost total use of the member. If the loss is only partial, then the percentage of permanent disability is determined by multiplying the anatomical rating by the number of weeks provided in the schedule. Effective April 16, 1999, the scheduled rates are as follows (100% impairment):

Arm 234 weeks	Leg 216 weeks
Hand 183 weeks	Foot 153.75 weeks
Eye 120 weeks	Thumb 56.25 weeks
First Finger 34.5 weeks	Great Toe 28.5 weeks
Second Finger 22.5 weeks	Third Finger 18.75 weeks
Toe other than Great Toe 12 weeks	Fourth Finger 11.25 weeks
Loss of Hearing in One Ear 39 weeks	Loss of Hearing Both Ears 200 weeks

B. Number of weeks for "whole person" and standard for recovery.

Compensation for injuries that are not specifically covered by the schedule (head, back or neck, heart attacks, strokes, mental conditions, etc.) are compensated based on actual loss of wage-earning capacity. The employee must show that the injury has resulted in an actual diminution in post-injury wages before entitlement to compensation is established. If a wage loss is established, the employee receives compensation at the rate of two-thirds of the wage loss. However, the employee cannot receive temporary total and permanent partial for more than 500 weeks unless rated at 20% or more for whole body impairment, in which case an additional 167 weeks may be owed. D.C. Code Ann. §32-1505(b).

23. Are there any requirements/benefits for vocational rehabilitation, and what is the standard for recovery?

The statute requires that the employer provide vocational rehabilitation which must be designed, within

reason, to return the employee to employment at a wage as close as possible to that earned at the time of injury. The Office of Workers' Compensation monitors vocational rehabilitation services and determines the adequacy and sufficiency of the rehabilitation. D.C. Code Ann. §32-1507.

24. How are permanent total disability benefits calculated, including the minimum and maximum rates?

Lifetime permanent total disability benefits are calculated initially at the rate of 2/3 of the employee's average weekly wage. The maximum compensation rate for 20210 is \$1,535.44 53.87 and the minimum weekly compensation benefit is \$388.473.86. Additionally, a variable cost of living increase must be factored in annually, without application by the employee.

25. How are death benefits calculated, including the minimum and maximum rates:

A. Funeral Expenses.

Funeral expenses up to \$5,000.00 may be allowed. D.C. Code Ann. §32-1509.

B. Dependency claims.

Death benefits are paid to the surviving spouse and children of the employee in the following manner: (1) a surviving spouse with no children receives 50 percent of the employee's average weekly wage and receives a lump sum payment of two years compensation on the date of re-marriage; (2) 16 2/3 percent of the average weekly wage is added for each child supported by the surviving spouse; (3) a surviving spouse receives 50 percent of the average weekly wage for the first child and the amount is increased 16 2/3 percent of the average weekly wage for each additional child and is to be split evenly among the children. In any case, total compensation may not exceed two-thirds of the employee's average weekly wage, or the maximum benefit payable.

26. What is the criteria for establishing a "second injury" fund recovery?

If the employee sustains a work-related injury that combines with a pre-existing disability or impairment and causes substantially greater injury or death, the employer's liability may be limited to 104 weeks of permanent disability compensation. D.C. Code Ann. §32-1508(6). However, Special Fund has been abolished for injuries after April 15, 1999.

27. What are the provisions for re-opening a claim for worsening of condition, including applicable limitations periods?

The employee may allege worsening of condition or claim additional compensation for any reason within:(1) one year of the rejection of a claim; (2) one year from the last payment of permanent disability benefits under the schedule; or (3) three years of payment of benefits under "Other Cases." The last payment of "compensation" does not include payment of medical expenses.

28. What situation would place responsibility on the employer to pay an employee's attorney fees?

When a claim is controverted by the employer, and, through the services of an attorney, the employee is ultimately awarded benefits, the employer may be responsible for the employee's attorney's fee up to 20 percent of all benefits secured. These fees are paid in addition to the award unless the parties skip an Informal Conference and proceed directly to Formal Hearing.

EXCLUSIVITY/TORT IMMUNITY

29. Is the compensation remedy exclusive:

A. Scope of immunity.

The liability of the employer as described in §32-1503 of the D.C. Act is exclusive and in place of all liability of the employer to the employee.

B. Exceptions (intentional acts, contractual waiver, "dual capacity," etc.).

If the employer fails to secure payment of compensation as required by the Act, an employee may elect to claim compensation under the Act or to maintain an action at law for damages. If the employee elects to maintain an action at law, the employer may not plead the defenses of negligence of a fellow servant, assumption of risk or contributory negligence. Additionally, intentional acts and/or sexual harassment may constitute exceptions to the exclusivity of workers' compensation as a remedy and permit a separate civil action against the employer.

30. Are there any penalties against the employer for unsafe working conditions?

None under the Act, but such penalties exist under both District of Columbia and federal law and vary according to the severity of the offense.

31. What is the penalty, if any, for an injured minor?

None.

32. What is the potential exposure for "bad faith" or claims handling?

If the Department of Employment Services or a court determines that an employer/insurer has delayed the payment of any installment of compensation in bad faith, the employer/insurer must pay to the employee, for the duration of the delay, the employee's actual weekly wage for the period that the employee is eligible to receive benefits in addition to employee's regular compensation benefits.

33. What is the exposure for terminating an employee who has been injured?

An employer who discharges, or in any other manner discriminates against, an employee because he or she claims, or attempts to claim, compensation, or for testifying or preparing to testify in such a claim, is subject to a penalty up to \$1,000.00. Any employee so discriminated against must be restored to his or her employment and compensated for any wage loss arising out of the discrimination. However, if the employee ceases to be qualified to perform the duties of the employment, he or she is not entitled to such restoration to employment and back pay. The employer alone, and not the insurer, is liable for any such penalties and payments.

THIRD PARTY ACTIONS

34. Can third parties be sued by the employee?

Yes.

35. Can co-employees be sued for work-related injuries?

Yes, if the injury results from an intentional tort.

36. Is subrogation available?

The employer has a lien against an employee's third-party recovery for workers' compensation payments. This lien may be pursued by subrogation or direct action by the employer against that party. D.C. Code Ann. §32-1535.

MEDICALS

37. Is there a time limit for medical bills to be paid, and are penalties available for late payment?

There is no specific time limit for the payment of medical bills, but such bills are to be paid promptly when due.

38. What, if any, mechanisms are available to compel the production of medical information (reports and/or an authorization) at the administrative level?

Subpoenas for medical records, medical release authorizations and requests for production of documents may be used. Additionally, any medical provider who treats a claimant shall, at no cost, supply records and bills to the employer, insurer, or its representative. DCMR §212.5.

39. What is the rule on (a) claimant=s choice of physician; (b) employer=s right to second opinion and/or Independent Medical Examination?

The Claimant has the right to choose a treating physician to provide medical care. The claimant may not change the treating physician without prior approval of the carrier or the Office of Workers' Compensation. The claimant may obtain referrals from one specialty to another without prior approval. An employer/insurer is entitled to an independent medical evaluation. If the claimant refuses to submit to such an evaluation, the Mayor shall suspend the payment of further compensation, medical payments, and health insurance coverage during the period the refusal, unless the circumstances for the refusal are justified. D.C. Code Ann. §32-1507(d).

40. What is the standard for covered treatment (e.g. chiropractic care, physical therapy, etc.)?

All reasonable and necessary treatment which is causally related to the injury is covered, subject to the employer's right to seek utilization review of the proposed or previously rendered service. Chiropractic care and physical therapy are both covered. D.C. Code Ann. §32-1507.

41. Which prosthetic devices are covered, and for how long?

The employer must furnish any prosthetic appliance for such period as the nature of the injury or the process of recovery may require. D.C. Code Ann. §32-1507.

42. Are vehicle and/or home modifications covered as medical expenses?

Yes, if related to the injury, reasonable, and necessary.

43. Is there a medical fee guide or schedule, or other provisions for cost containment?

As of April 16, 1999, each provider of medical care or services must use a standard coding system for reports and bills. Medical care and services shall be billed at the rate established in the medical fee schedule adopted by the mayor. The fee scheduled is based on 113% of Medicare's prevailing rates. Utilization review is available for all medical providers' bills.

44. What, if any, provisions or requirements are there for "managed care"?

None.

PRACTICE/PROCEDURE

45. What is the procedure for contesting all or part of a claim?

The filing of a Notice of Controversion (Form No. 11 DCWC) should be filed to contest all or part of a claim.

46. What is the method of claim adjudication?**A. Administrative level.**

An Informal Conference concerning the claim is scheduled by a claims examiner of the District of Columbia Office of Workers' Compensation. Witness testimony is not allowed, and the employee's testimony is not made under oath or on the record. The claims examiner issues a non-binding recommendation concerning the payment of compensation. Either party may reject the recommendation and request a Formal Hearing before an Administrative Hearings Division administrative law judge. If rejection of the OWC recommendation is not made in a timely manner, the recommendation shall be converted to a final order. The order issued after any Formal Hearing is binding.

B. Trial court.

Any party disagreeing with the decision of the administrative law judge may appeal to the Compensation Review Board of the Department of Employment Services. This appeal is based on a "substantial evidence" review of the record before the hearing examiner.

C. Appellate.

An appeal from the Department of Employment Services may be taken to the District of Columbia Court of Appeals, which must affirm the decision of the Department if it is rational, supported by substantial evidence, and in accordance with the law.

47. What are the requirements for stipulations or settlements?

Stipulations and settlements must be in writing and submitted to the Office of Workers' Compensation for approval. Factors considered by the Office of Workers' Compensation include: (1) whether there is a valid dispute regarding issues of compensability of a claim; (2) the extent of total or partial disability and other liability under the Act; (3) the employee's age and educational level in relationship to vocational evaluation and entitlement; (4) whether the employee has reached maximum medical improvement; and (5) whether and why the employee has refused to undergo surgery to improve a medical condition.

48. Are full and final settlements with closed medicals available?

Yes.

49. **Must stipulations and/or settlements be approved by the state administrative body?**

Yes.

RISK FINANCE FOR WORKERS' COMPENSATION

50. **What insurance is required; and what is available (e.g. private carriers, state fund, assigned risk pool, etc.)?**

Every employer in the District of Columbia is required to "secure the payment of compensation" under the District of Columbia Workers' Compensation Act, either through insurance or by qualifying as a self-insurer. The District of Columbia does not have an insurance fund, but insurance is available through private insurers and an assigned risk pool. Insurers must be authorized to transact workers' compensation insurance in the District of Columbia. D.C. Code Ann. §32-1534.

51. **What are the provisions/requirements for self-insurance?**

A. For individual entitles.

Employers may qualify as self-insurers by furnishing satisfactory proof to the District of Columbia government of the financial ability to pay compensation under the Act and by receiving authorization from the Mayor to pay such compensation directly. Applications for self-insurance are handled on a case-by-case basis and depend generally on the size and financial stability of the employer, the number of employees, and the previous claims history. D.C. Code Ann. §32-1534.

B. For groups or "pools" or private entities.

The Act does not specifically address group insurance or "pooling".

52. **Are "illegal aliens" entitled to benefits of workers' compensation as The Immigration Control Act indicates that they cannot be employees although most state acts include them within definition of "employee"?**

Yes, they are entitled to benefits.

53. Are terrorist acts or injuries covered or excluded under workers' compensation law?

Although there are no specific statutes or case law addressing coverage for such injuries, it is presumed that they would be compensable if they were found to have arisen out of and in the course of employment.

54. Are there any state specific requirements which must be satisfied in light of the obligation of the parties to satisfy Medicare's interests pursuant to the Medical Secondary Payer Act?

No.

55. How are subrogation liens of Medicaid and health insurers treated under workers' compensation law?

It is presumed that federal statutes addressing this issue would be dispositive. Additionally, it is presumed that any payments made by health insurers would be subject to utilization review.

56. What are the requirements for confidentiality and privacy of medical records under workers' compensation law and how are they affected by the state and federal law (HIPPA)?

In general, claimants sign releases to allow their employers to obtain copies of their medical reports and bills. Subpoenas may be issued for medical records if the case is before the Administrative Hearing Division of the Department of Employment Services. Additionally, any medical provider who treats a claimant shall, at no cost, supply records and bills to the employer, insurer, or its representative. DCMR §212.5.

57. What are the provisions for "Independent Contractors"?

Independent Contractors are not employees under the Act.

58. Are there any specific provisions for "Independent Contractors" pertaining to professional employment organizations/temporary service companies/leasing companies?

No.

59. **Are there any specific provisions for “Independent Contractors” pertaining to owner/operator of trucks or other vehicles for driving or delivery of people or property?**

No.

60. **What are the "Best Practices" for defending workers' compensation claims and controlling workers' compensation benefits costs and losses?**

Financial exposure to workers’ compensation is an expensive and complex challenge for every business. The best means for reducing and eliminating that exposure is a strong and individualized “Best Practices” plan.

Every business must deal with the expense of workers’ compensation in its risk management and in dealing with the inevitable claim. The best approach to ameliorating a business exposure is a strong and individualized "Best Practices" plan.

61. **Are there any state specific requirements which must be satisfied in light of the obligation of the parties to protect Medicare’s interests when settling the right to medical treatment benefits under a claim?**

There are no state specific requirements, other than the general requirements that Medicare’s interests must be protected when settling the right to medical treatment. The Employer and Insurer must agree to reimburse Medicare for any conditional payments.

The ALFA affiliated counsel who compiled this State compendium offers an expert, experienced and business-friendly resource for review of an existing plan or to help write a "Best Practices" plan to guide your workers’ compensation preparation and response. No one can predict when the need will arise, so ALFA counsels that you make it a priority to review your plan with the ALFA Workers’ Compensation attorney for your state, listed below:

Julie D. Murray, Esquire

jmurray@semmes.com

Tel: (410) 576-4757